

U.S.S.N 09/765,491

Filed: January 18, 2001

PETITION FOR SUPERVISORY REVIEW BY THE COMMISSIONER**Remarks**

Applicant respectfully request that the Commissioner exercise supervisory authority in the prosecution of the pending application, as allowed under 37 C.F.R. §1.181 (a) (3).

In the most recent Office Action, dated November 4, 2003, the Examiner has stated that the Applicant's submission of a Petition for Supervisory Review by the Commissioner, dated March 6, 2003, was premature and has made the election of species requirement final. In the previous Office Action, dated February 12, 2003, the Examiner required an election of species from among the angiogenesis inhibitors listed in claims 4, 10 and 17. An election of species requirement, if necessary, should be made in the first Office Action, before a search of the prior art has been conducted. *See* 37 C.F.R. 1.146 The limitations listing the angiogenesis factors have been in the claims throughout the prosecution of the application. Prior to the Office Action, dated February 12, two Office Actions on the merits were mailed during the prosecution of this application; the first is dated November 11, 2001, and the second is dated August 13, 2002.

An election of species may be required if an application contains generic claims and claims to more than one patentably distinct species. The patent rules explain that in this situation, "[i]n the *first* Office Action [...] the examiner may require the applicant in the reply to that action to elect a species of his or her invention." 37 C.F.R. § 1.146 (emphasis added) Similarly, M.P.E.P. § 808.01 (a) states that "[e]lection of species *should be required prior to a search on the merits* [...] in all applications containing both species claims and generic or Markush claims." (emphasis added) Thus the rules and guidelines for the U.S. Patent Office clearly require an election of species, if necessary, in the first office action, prior to any search for prior art. Therefore the Examiner cannot wait until after the second Office Action on the merits to issue an election of species requirement.

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Applicants have found no basis in the patent rules or laws or in the M.P.E.P. for making *an election of species* after the first office action. Furthermore, the Examiner has not cited any source to justify the election of species requirement so late in the prosecution of this application. In her response, the Examiner suggests that a *restriction requirement* can be made at any time before final action, however, applicants respectfully submit that this is not valid since this action pertains to *an election of species* and not a restriction requirement.

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Applicants respectfully request removal of the election of species requirement, and consideration of and allowance of claims 4-6, 10-12, and 17-19.

Respectfully submitted,



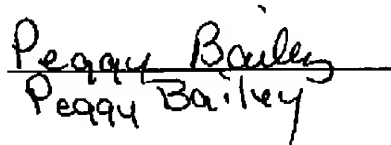
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Date: February 4, 2004

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Certificate of Facsimile Transmission

I hereby certify that this Amendment Under 37 C.F.R. § 1.312, and any documents referred to as attached therein are being facsimile transmitted on this date, December 3, 2003, to the Commissioner for Patents, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.



Date: February 4, 2004

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PETITION FOR SUPERVISORY REVIEW BY THE COMMISSIONER**APPENDIX: *Claims as Pending***

4. (previously presented) A method for inhibiting symptoms associated with angiogenesis in the treatment of skin disorders selected from the group consisting of lymphangiogenesis, Sturge-Weber syndrome, verruca vulgaris, neurofibromatosis, tuberous sclerosis, venous ulcers, molluscum contagiosus, seborrheic keratosis, and actinic keratosis comprising administering to the individual in need of treatment thereof an angiogenesis inhibitor wherein the angiogenesis inhibitor is selected from the group consisting of collagenase inhibitors, angiogenic fumagillin derivatives, 2,5-diaryltetrahydrofurans, aminophenylphosphonic acid compounds, 3-substituted oxindole derivatives, thalidomides, penicillamine and IL12 in an amount effective to inhibit angiogenesis.
5. (original) The method of claim 4 wherein the angiogenesis inhibitor is applied topically.
6. (previously presented) The method of claim 5 wherein the angiogenesis inhibitor is TNP-470.
10. (previously presented) A method to treat the symptoms associated with elevated basic fibroblast growth factor in a disorder selected from the group consisting of angiosarcoma, hemangioendothelioma, malignant melanoma and Kaposi's sarcoma, comprising administering to the individual in need of treatment an effective amount of a curcuminoid to inhibit angiogenesis.
11. (previously presented) The method of claim 10 wherein the curcuminoid is curcumin.

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12. (previously presented) The method of claim 10 wherein the curcuminoid is demethoxycurcumin.

17. (previously presented) A method for inhibiting skin disorders selected from the group consisting of lymphangiogenesis, hemangioma of childhood, Sturge-Weber syndrome, verruca vulgaris, neurofibromatosis, tuberous sclerosis, pyogenic granulomas, recessive dystrophic epidermolysis bullosa, venous ulcers, rosacea, eczema, molluscum contagiosum, seborrheic keratosis, and actinic keratosis comprising administering to the individual in need of treatment thereof an angiogenesis inhibitor in an amount effective to inhibit angiogenesis, wherein the angiogenesis inhibitor is selected from the group consisting of

tetracyclines inhibiting collagenase, and

a sulfated polysaccharide which inhibits angiogenesis.

18. (previously presented) The method of claim 10 wherein the disorder is malignant melanoma.

19. (previously presented) The method of claim 10 wherein the disorder is recessive dystrophic epidermolysis bullosa.

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